

AMENDMENT  
U.S. Appln. No. 09/839,986

**REMARKS**

By this amendment claims 1 and 5-8 are cancelled and thus claims 2-4 and 9-20 are all the claims pending in the application. Claims 2-4, 9 and 16-18 are objected to, claims 1, 5-8, 10-12 and 14-15 are rejected and claims 13, and 19-20 are withdrawn from further consideration. Reconsideration and allowance of all pending claims are respectfully requested in view of the following remarks.

**ELECTION/RESTRICTION**

In the present Office Action, the Examiner states that Applicant's previous elections "without traverse" are acknowledged and the non-elected claims are withdrawn from consideration. However, as expressly indicated in Applicant's response of December 12, 2002, Applicant made its elections with traverse pointing out the significant deficiencies in the restriction/election requirement. Applicant reiterates its arguments of December 12, 2002 and submits that the Examiner's *prima facie* burden for supporting the restriction requirement has not been established. Reconsideration is respectfully requested.

**ALLOWABLE SUBJECT MATTER**

Claims 2-4, 9 and 16-18 are indicated as including allowable subject matter. Applicant kindly thanks the Examiner the indication of allowable subject matter. Applicant hereby amends claim 2 and 3 in independent form, which should render claims 2-4 and 9 allowable. Furthermore, Applicant discusses the patentability of the rejected base/intervening claims of claims 16-18 below. Accordingly, all pending claims should now be in condition for allowance.

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**CLAIM REJECTIONS**

**35 U.S.C. § 102**

Claims 1, 10-11 and 14-15 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 6,224,516 to Disch (“*Disch*”). Applicant respectfully traverses this rejection for the following reasons.

By this amendment, Applicant cancels claim 1 without prejudice or disclaimer and thus the rejection of this claim is now moot. With respect to claims 10-11 and 14-15, Applicant respectfully submits that *Disch* fails to teach or suggest at least the claimed feature of *the at least one enclosure having doors that in a first position, obscure the computer equipment and exercise equipment from view, and in a second position, facilitate the use of the deployable exercise equipment.*

Referring to Fig. 1 and column 1 of *Disch*, the Office Action alleges that the *Disch* invention may be used in conjunction with a desk for computer workstation, and thus it “can be said to enclose computer equipment.” Applicant respectfully disagrees.

In fact, as best shown in Figs. 1 and 8, *Disch* discloses the use of drawers (which are not analogous to Applicant’s claimed doors). For example, notice the bottom covering where conveyer belt 11 may be pulled out. Based on the figures, *Disch* appears to show furniture having a drawer for extending conveyer belt 11 as opposed to *an enclosure having doors, which in a first position, obscure the computer equipment and exercise equipment from view, and in a second position, facilitate the use of the deployable exercise equipment.*

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Claims 11 and 14-15 also include this claim feature by virtue of their dependency on claim 10. Consequently, since *Disch* does not teach or suggest an enclosure having doors whatsoever, nor one having doors arranged as claimed by Applicant, *Disch* cannot possibly anticipate claims 10-11 and 14-15.

The Office Action states on page 3 that, “the compartment covers shown by *Disch* are equivalent to the claimed doors.” Again, Applicant respectfully disagrees. A drawer is not a door or vice versa (see for example, Merriam Webster online dictionary [www.m-w.com](http://www.m-w.com)). Furthermore, since *Disch* is entirely silent on any configuration and arrangement of the depicted drawers (referred to by the Examiner as “compartment covers”), it is only speculation leading to conclusory assumptions about their function and arrangement. Clearly, *Disch* does not include doors which have the first and second position and as claimed by Applicant.

The Examiner is respectfully reminded that drawings and pictures can anticipate claims ONLY IF they clearly show the structure that is claimed. *In re Mraz*, 455 F.2d 1069 (CCPA 1972). The statement about equivalence is not applicable since a claim is anticipated only if the identical invention is shown in as complete detail as contained in the claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989).

To that end, Applicant respectfully submits that *Disch* also fails to teach or suggest the claimed *computer peripheral in the workout portion, the computer peripheral coupled to the computer equipment of the workstation by a link*; the claimed *computer equipment operative to*

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*perform home/office computing tasks; or the workstation portion and workout portion being housed in at least one enclosure.*<sup>1</sup>

Since *Disch* fails to teach or suggest any of the foregoing limitations in claims 10-11 and 14-15, *Disch* cannot anticipate these claims. Accordingly, for all the foregoing reasons, Applicant respectfully requests the Examiner to reconsider and withdraw the §102 rejection based on *Disch*.

**35 U.S.C. § 103**

Claims 5-8 and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Disch* in further view of U.S. Patent 3,874,657 to Niebojewski (“*Niebojewski*”) and U.S. Patent 5,813,947 to Densmore (“*Densmore*”). Applicant respectfully traverses this rejection for the following reasons.

By this Amendment, Applicant cancels claims 5-8 and thus the rejection thereof is now moot. With respect to the remaining rejection of claim 12 and the potential obviousness of any of Applicant’s other claims in light of these references, Applicant submits that a *prima facie* case of obviousness is not established.

To establish a *prima facie* case of obviousness under 35 U.S.C. § 103, three requirements must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify

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<sup>1</sup> Another assumption stated on page 3 that it “can be said to enclose computer equipment” demonstrates further speculation in the Office Action as opposed to an actual teaching or suggestion by *Disch*.

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the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (MPEP 2143)

In the instant case, the Office Action does not provide any basis whatsoever for combining the references. Instead, the Office Action merely states it would have been obvious to modify *Disch*.....for the purpose of working out.....with a surface for supporting a monitoring device. Respectfully, to the extent this statement can be comprehended, simply stating the features of each reference is not the same as a suggestion for combining the features in the references. All of the claimed features and the motivation for combining these features are required for establishing *prima facie* obviousness under 35 U.S.C. § 103. See for example, *Ex parte Clapp*, 227 USPQ 972 (Bd. Pat. App. & Inter. 1985) (the initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done), and *In re Mills*, 916 F.2d 680 (Fed. Cir. 1990) (the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination).

In point of fact, the monitor surface (presumably 210) disclosed by *Densmore* appears to be either incompatible with, or redundant of, the work bench top 9 disclosed by *Disch*, and thus *Disch* teaches away from the Examiner's suggested combination with *Densmore*. Additionally, *Niebojewski* discloses a fold-out exercise component (i.e., abdominal board unit 46) as opposed to the drawer-like pull out exercise component (i.e., treadmill 11) disclosed by *Disch*. Therefore, *Niebojewski* uses doors 15, 16 to accommodate the folding out of unit 46 whereas *Disch* uses

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drawer faces (e.g., covered compartments) to accommodate the pulling out of treadmill 11. The used of doors with the sliding pull-out treadmill of *Disch* is not taught or suggested by *Niebojewski* and thus there is insufficient motivation to combine the references as suggested by the Examiner. It is only through improper hindsight of Applicant's that the Examiner makes a piecemeal reconstruction of Applicant's claims.

Lastly, *Disch*, *Niebojewski* and *Densmore*, taken alone or in any combination, fail to teach or suggest at least the following features of Applicant's claims:

*-an enclosure having doors, which in a first position, obscure the computer equipment and exercise equipment from view, and in a second position, facilitate the use of the deployable exercise equipment*

*-a computer peripheral in the workout portion, the computer peripheral coupled to the computer equipment of the workstation by a link*

*-two enclosures and a support surfaces that supports a provided monitoring device*

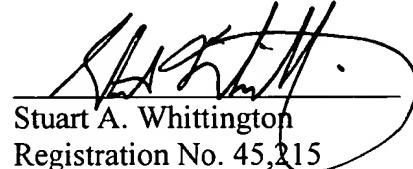
For all the foregoing reasons, Applicant respectfully submits the pending claims are novel and non-obvious over the cited combination and requests the Examiner to reconsider and withdraw this §103 rejection.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

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Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this case, and any required fee, except for the Issue Fee, for such extension is to be charged to **Deposit Account No. 19-3878** unless paid by an accompanying check.

Respectfully submitted,

  
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